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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 FEB 20 P 3:48

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-08-0049

**SWING FIRST GOLF's REPLY TO JOHNSON UTILITIES LLC'S RESPONSE TO
SWING FIRST GOLF LLC'S MOTION TO COMPEL**

**SWING FIRST GOLF's RESPONSE TO CROSS MOTION TO COMPEL DISCOVERY
RESPONSES**

Swing First Golf LLC ("Swing First") hereby

- Replies to Johnson Utilities LLC's ("Utility's") Response To Swing First Golf LLC's Motion To Compel; and
- Responds to Utility's Cross Motion To Compel Discovery Responses

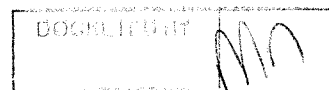
I REPLY

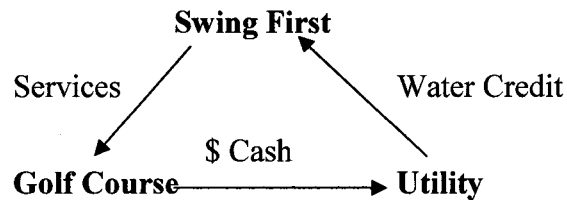
There is very little to add. Utility continues to mischaracterize Swing First's theory of this case. Because this theory has been patiently explained to Utility on numerous occasions, one can only assume that the mischaracterization is deliberate

This case concerns overcharges by Utility to Swing First and Utility's failure to provide a water credit to Swing First as part of a three-way transaction between Utility, Utility's affiliate golf course, and Swing First. The three-way transaction was very simple: Swing First provided management services for Golf Course; Utility paid Swing First by an irrigation water credit; and Golf Course would compensate Utility by paying for the water:

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Utility also ignores one very important fact, which will be established. Utility did provide the water credit. It was only after Swing First discontinued managing Golf Course that Utility, at George Johnson's direction, reversed the credit, stopped delivering effluent, and began charging Swing First five times the lawful rate for the water it actually delivered.

Utility does not deny that Golf Course is a Utility affiliate. Utility does not deny that Golf Course and Utility are under the common control of George Johnson. Because Golf Course is a commonly controlled Utility affiliate, and Utility participated in the three-way transaction, the Commission has jurisdiction over the transaction and the data requests are relevant.

The questions are clear, unambiguous, and easy to answer. If Utility does need any kind of clarification, it need only ask.

II RESPONSE TO CROSS-MOTION

There are only two questions to which Utility moves to compel answers. Swing First objected to these two questions on October 30, 2008. Now, three-and-one months later, Utility suddenly needs the information. JU 2.9 states

JU 2.9 *With regard to the Agreement Regarding Utility Service dated September 17, 1999 (the "Agreement"), please provide the following information:*

- (a) *the names and titles of those persons representing Johnson Ranch Holdings, LLC, who were involved in the negotiation of the assignment of the Agreement from Johnson Ranch Holdings, LLC, to Swing First Golf, LLC*
- (b) *the names and titles of those persons representing Swing First Golf, LLC, who were involved in the negotiation of the assignment of the Agreement from Johnson Ranch Holdings, LLC, to Swing First Golf, LLC.*

1 Swing First's objection stated: "The information sought is confidential, proprietary, and
2 irrelevant." That is still true. As to question subpart (a), Utility can best answer who represented
3 its affiliate, also controlled by George Johnson. Further, the information sought is irrelevant.
4 Certainly, a legitimate inquiry when a contract is ambiguous (which it is not) concerns the intents
5 of the drafters. However, Swing First is not aware of any principle of contract construction that
6 looks to the intents of the contract assignor and assignee. Their intents are irrelevant.

7 Further, based on additional review of the sale documents, it does not appear that the
8 1999 Agreement was ever assigned. Instead, it appears that Utility and Swing First essentially
9 adopted the relevant provisions of the 1999 Agreement through their subsequent course of
10 dealings. If there was no assignment, then JU 2.9 cannot be answered.

11 JU 2.39 states:

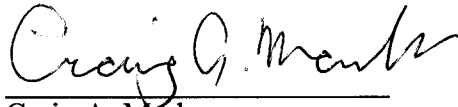
12 JU 2.39 *Is it the position of Swing First Golf, LLC, that the Agreement Regarding*
13 *Utility Service dated September 17, 1999, is a special contract between*
14 *Johnson Utilities and Swing First Golf, LLC?*

15 Swing First responded as follows: "Objection. Without a definition of "special contract," the
16 question is vague and calls for speculation." In its petulant argument, Utility claimed that the
17 term "special contract" is "well known and commonly used." However, the term is not well
18 known or commonly used by Swing First's counsel. Utility could have helpfully avoided the
19 entire issue by just defining "special contract" sometime in the last three-and-one half months,
20 and then asking Swing First if the 1999 Agreement is a special contract according to that
21 definition. Rather than be helpful, Utility chose to waste the time of counsel and the
22 Administrative Law Judge.

23 **III RELIEF REQUESTED**

24 Utility should be required to answer the data requests that are the subject of Swing First's
25 Motion to Compel. Swing First should not be required to answer the data requests that are the
26 subject of Utility's Cross Motion to Compel.
27

1 RESPECTFULLY SUBMITTED on February 20, 2009.

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13 **Original** and 13 copies **filed**
14 on February 20, 2009, with:

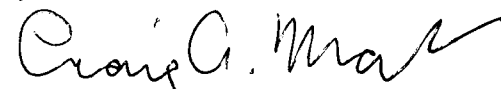
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16 Docket Control
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21 **Copy** of the foregoing **mailed and e-mailed**
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